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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHLOMO GOTMAN and GUIDO PARDO ROQUES

Appeal 2016-003296
Application 13/881,160¹
Technology Center 2600

Before JUSTIN BUSCH, CARL L. SILVERMAN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–24, which constitute all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Koninklijke Philips N.V. as the real party in interest. App. Br. 2.

THE INVENTION

The disclosed and claimed invention is directed to an imaging system with two consoles. Abstract.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system, comprising:
 - an imaging apparatus configured for imaging a patient;
 - a console for controlling the imaging apparatus, wherein the console includes a processor and application memory encoded with computer readable instructions for visually presenting a touch screen interactive graphical user interface based console application for controlling the imaging apparatus for scanning the patient without a keyboard or pointing device, wherein the imaging apparatus and the console are located in a same examination room in which the patient is imaged; and
 - a control room operator console configured to alternatively control the imaging apparatus to scan the patient, wherein the control room operator console includes a display, a keyboard, and a mouse, and is located outside of the examination room.

REFERENCES

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

Mahajan	US 2008/0178090 A1	July 24, 2008
Beyar	US 2008/0217564 A1	Sept. 11, 2008
Vangdal	US 2009/0093705 A1	Apr. 9, 2009
Manzke	US 2009/0110152 A1	Apr. 30, 2009
Steinle	US 2009/0259960 A1	Oct. 15, 2009
Roessl	US 2010/0208962 A1	Aug. 19, 2010
King	US 2011/0179381 A1	July 21, 2011 (filed on Jan. 21, 2010)

REJECTIONS²

A. Claims 1–4, 7–9, 11, and 13–18, stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Beyar in view of Vangdal and Roessl. Final Act. 3–11.

B. Claims 5, 6, 10, 12, and 19 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Beyar in view of Vangdal, Roessl, and Manzke.³ Final Act. 11–15.

C. Claim 20 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Beyar in view of Vangdal, Roessl, King, and Mahajan. Final Act. 15–16.

D. Claims 21–24 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Beyar in view of Vangdal, Roessl, and Steinle. Final Act. 16–18.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellants. We are not persuaded by Appellants’ arguments regarding claims 1–24.

² In addition to the recited rejections, in the Final Action the Examiner also rejected the subject matter of claim 25 as obvious. After the Final Action, Appellants cancelled claim 25, mooted the rejection. *See* App. Br. 12 (Claims App’x).

³ Although the headings of the rejection for grounds B, C, and D do not explicitly include Vangdal and Roessl, the rejections state the claims are rejected “over Beyar *in combination above*” and the substance of the rejections incorporates the rejections of independent claims 1 or 13, which includes those references. *Compare* Final Act. 11–18, *with* Final Act. 3–11.

Ground A (Claims 1–4, 7–9, 11, and 13–18)

Appellants argue the Examiner erred in finding Roessl teaches a control room operator console configured to alternatively control the imaging apparatus to scan a patient as recited in claim 1:

The Office relies on Beyar to disclose the touch screen only console in the examination room. The Office relies on Vangdal to disclose the control room operator console located outside of the examination room. The Office relies on Roessl to disclose the control room operator console is configured to alternatively control the imaging apparatus to scan a patient, citing paragraphs [0022] and [0044] and elements 22, 24, 26 and 44 of Fig. 1.

App. Br. 4. Appellants discuss the cited paragraphs of Roessl—but not the cited paragraphs of Beyar and Vangdal—and assert that “the combination of references discloses control of an imaging apparatus solely with a ‘single’ console, not alternatively with either a console in the examination room, or a console in the control room.” *Id.*

The Examiner finds Beyar teaches an imaging device with a control apparatus in the imaging room. Final Act. 3–4 (citing Beyar Fig. 1–4, ¶¶ 42, 44, 48, 51–53, 57, 58, 62). The Examiner further finds Vangdal teaches “a control room operator console configured to alternatively control the imaging apparatus, wherein the control room operator console includes a computer with a display, and is located outside of the examination room.” Final Act. 4 (citing Vangdal Fig. 1, ¶¶ 2, 19, 25–30 (emphasis omitted)). The Examiner also finds Roessl teaches various elements of the control room console. Final Act. 5 (citing Roessl Fig. 1, ¶¶ 22, 44). The Examiner provides a rationale for combining Beyar, Vangdal, and Roessl. Final Act. 4–5.

In the Appeal Brief, Appellants have not identified any errors in the Examiners findings relating to Beyar or Vangdal.⁴ “If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

Nor are we persuaded the Examiner erred based on Appellants’ arguments directed to Roessl. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The test for obviousness is not whether the claimed invention is expressly suggested in any one or all of the references, but whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Appellants further argue that the Examiner erred in finding a reason to combine the teachings of the references to have two control consoles. According to Appellants, a person of ordinary skill in the art would not have used two consoles when only a single console is needed because such a configuration “increases overall system cost, requires synchronization between the consoles, so that the scanner does not receive conflicting scan parameters, such as those entered at one console and again at the other

⁴ To the extent Appellants attempt to raise a new issue in the Reply Brief without showing good cause, those arguments have been waived. *See* 37 C.F.R. §41.41(b)(2) (same).

console, consumes additional space which may not be available, etc.” App. Br. 4.

We are not persuaded by Appellants’ argument that the Examiner erred. First, Appellants rely on attorney argument, not evidence. It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence).

Second, although Appellants cite reasons why it believes a person of ordinary skill in the art would not have modified Beyar to add a second console, Appellants do not address the Examiner’s finding on why a person of ordinary skill in the art would have added the second console. Arguments that do not address the Examiner’s findings are not persuasive of error.

Third, although Appellants have identified what they claim are issues associated with adding a second console, Appellants have not argued—let alone presented evidence—that such engineering changes would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Accordingly, we do not consider Appellants’ argument to sufficiently demonstrate the Examiner erred.

Therefore, we sustain the rejection of independent claim 1, along with the rejection of claim 13, which is argued on the same grounds, and dependent claims 2–4, 7–9, 11, and 14–18, which are not argued separately. *See App. Br. 4–5.*

Ground B (Claims 6 and 19)

Appellants argue claim 6 (which depends from claim 1) and claim 19 (which depends from claim 13) are patentable for the same reasons discussed above for their respective independent claims. App. Br. 6, 7. Because we determine that the rejections of claims 1 and 13 are not erroneous for the reasons discussed above, we sustain the rejections of these claims.

Ground B (Claim 5)

Appellants argue the Examiner erred in finding Manzke teaches or suggests a shield that “includes a slide that slides along a rail on a floor and roller hangers that slide along a member extending across a top of the shield,” as recited in claim 5. App. Br. 5–6; Reply Br. 3–4. First, Appellants argue the Examiner erred in finding Manzke teaches sliding because wheels do not slide. App. Br. 5; Reply Br. 3. Second, Appellants argue that “[a] system of wheels and rollers attached to a shield and configured to *roll* in a floor mounted track or railing is structurally and mechanically quite different from hangers that *slide* along a member.” *Id.*

The Examiner finds “Manzke explicitly discloses the shield includes a slide that slides along a rail on a floor and roller hangers that slide along a member extending across a top of the shield.” Final Act. 11 (citing Manzke, Fig. 6, ¶¶ 34–36) (emphasis omitted); *see also* Adv. Act. 2; Ans. 22. In particular, the Examiner finds that a person of ordinary skill in the art would have included the functionality of movement used on one part of the shield to the other. Adv. Act. 2; Ans. 22.

We are not persuaded by either of Appellants' arguments that the Examiner erred. Although Appellants' arguments focus on whether or not wheels or rollers slide, the cited section of Manzke specifically states that the wheels or rollers are optional. Manzke ¶ 34; *accord* App. Br. 5 (quoting Manzke ¶ 34 ("Together with *optional* wheels or rollers 602a, 602b which help support the shield 24 for movement in a floor mounted track or railing 604, the support 20 supports the shield 24 for motion about the axis 26." (emphasis added))). The removal of the optional wheels or rollers results in a shield that slides.⁵

Ground B (Claim 10)

Appellants argue the Examiner erred in finding Manzke teaches or suggests "a sensor near the console that identifies a presence of an operator inside of the shield, which triggers the console to close a lead curtain of the shield," as recited in claim 10. App. Br. 6; Reply Br. 4. Appellants argue Manzke contains two types of switches. *Id.* Appellants argue the first switch does not teach the claim limitation because (1) it "is a user control and not a sensor" and (2) it "cannot tell the difference between an operator in the shield and an operator outside of the shield." App. Br. 6. As for the second switch, Appellants argue it is a collision sensor that "stops the shield from moving, whereas claim 10 requires the sensor to trigger the moving the curtain of the shield." *Id.*

The Examiner finds that the switch on the handle that closes the shield is a sensor. Final Act. 12; Adv. Act. 2; Ans. 22–23. More particularly, the

⁵ Because we rely on Manzke teaching or suggesting removal of the optional wheels or rollers, we need not decide whether or not wheels and rollers slide.

Examiner concludes that a sensor in claim 10 is broad enough to encompass an actuating switch. Ans. 22. The Examiner also concludes that claim 10 does not require the sensor to determine whether or not the operator is located inside the shield. Ans. 23.

During prosecution, claims must be given their broadest reasonable interpretation while reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). There is a presumption that a claim term carries its ordinary and customary meaning. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An applicant may rebut this presumption, however, by acting as his own lexicographer, providing a definition of the term in the specification with “reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). “[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments. . . . [C]laims may embrace ‘different subject matter than is illustrated in the specific embodiments in the

specification.”” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc) (citations omitted).

The ordinary and customary meaning of the term sensor is “a device that responds to a physical stimulus (as heat, light, sound, pressure, magnetism, or a particular motion) and transmits a resulting impulse (as for measurement or operating a control).” *Sensor*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/sensor> (last accessed Jan. 9, 2017). Appellants have not identified any portion of the Specification which would limit the meaning of the term sensor. Accordingly, we agree with the Examiner that the broadest reasonable construction of sensor encompasses an actuator switch, such as the type taught by Manzke.

We also agree with the Examiner that claim 10 does not require the sensor to determine whether or not the operator is within the shield. Claim 10 merely recites what happens when the sensor “identifies a presence of an operator inside of the shield.” App. Br. 10 (Claims App’x). However, claim 10 does not recite any limitation on what happens if the sensor identifies the presence of an operator outside of the shield. *Id.* Accordingly, the claim is broad enough to encompass the teaching of Manzke where triggering the sensor/switch closes the shield regardless of the location of the operator. *See* Ans. 23.

Finally, we are not persuaded by Appellants’ focus on the sensor that stops the motion of the shield. Because the first switch/sensor teaches the claim limitation, Appellants’ arguments regarding the second switch/sensor are moot.

Ground B (Claim 12)

Appellants argue the Examiner erred in finding Manzke teaches or suggests the stationary gantry recited in claim 12 including “a mounting bracket, and wherein the console is fixedly attached to the mounting bracket of the stationary gantry of the imaging apparatus.” App. Br. 6–7; Reply Br. 4–5. Specifically, Appellants argue that neither console 402 nor console 606 are “fixedly attached to a mounting bracket of the stationary gantry 12.” App. Br. 7. Appellants further argue the Examiner erred in relying on a rearrangement of components because “[t]he prior art provides no such motivation without the benefit of appellant’s specification.” Reply Br. 4–5 (citing MPEP 2144.04 (quoting *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (BPAI 1984))).

The Examiner finds Manzke teaches or suggests the additional limitations recited in claim 12. Final Act. 13–14; Ans. 23–24. Specifically, the Examiner finds Manzke teaches a display 206 and “in order for a display device to be properly mounted onto a different device, the different device must necessarily include a bracket to hold & sustain display device.” Final Act. 13 (emphasis omitted). The Examiner further finds that the location of the display is a matter of routine design choice and “[d]ue to the fact the operation is the same and the arranged position is different, it would have been obvious to rearrange to a different position. This is another case of *mutatis mutandis*, please review M.P.E.P 2144.04>VI. REVERSAL, DUPLICATION, OR REARRANGEMENT OF PARTS>C. Rearrangement of Parts.” Ans. 24.

“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S.

398, 417 (2007). Absent “factual evidence of any critical relationship in position or size, or of any difference in effect or result . . . [s]uch [routine] changes in design of the various features are no more than obvious variations consistent with the principles known in that art.” *In re Rice*, 341 F.2d 309, 314 (CCPA 1965).

Appellants have not shown that attaching the console to the mounting brackets on the gantry as opposed to some other location “result[s] in a difference in function or give[s] unexpected results.” *See Rice*, 341 F.2d 309 at 314. Because the location of the console is a mere obvious variation consistent with the principles known in the art that would work as expected, and, there is no evidence that the combination would provide unexpected results, that location would have been obvious to a person of ordinary skill in the art.

Moreover, to the extent Appellants are arguing that the prior art must suggest the change in location, that is an incorrect statement of law. In *KSR*, the Supreme Court rejected the rigid application of the teaching, suggestion, or motivation (TSM) test in favor of a more expansive and flexible approach to the determination of obviousness. *KSR*, 550 U.S. at 415. As the Supreme Court recognized, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418. Thus, to the extent Appellants’ argument is premised on strictly applying the TSM test, it is not persuasive of Examiner error.

Accordingly, we sustain the Examiner’s rejection of claim 12.

Grounds C and D

With respect to dependent claims 20–24, Appellants merely contend that because the additional references used in the rejections of these claims (King, Mahajan, and Steinle) do not cure the shortcomings of the other references applied against claim 13, the Examiner failed to make a prima facie case of obviousness for these claims. App. Br. 7–8. Because we determine that the rejection of claim 13 is not erroneous for the reasons discussed above, we sustain the rejections of these claims.

DECISION

For the above reasons, we affirm the Examiner’s decision rejecting claims 1–24.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED